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DEC 19 2005

OFFICE OF PETITIONS

In re Application of :
Yeung et al. :
Application No. 09/847,570 : DECISION ON PETITION
Filed: May 2, 2001 :
Attorney Docket No. 25821P032 :.

This is a decision on the petition under 37 CFR 1.47(b) filed November 29, 2005, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.63 where they require that a supplemental declaration be executed by the named inventor.¹

Joint inventor, Mong Tung Yeung signed the originally filed declaration in the present application. Applicant states that applicant's European Attorney and the co-inventors have been unable to contact inventor Yeung to obtain his signature on the new declaration and power of attorney documents after diligent efforts.

Upon reviewing the petition, the Office has concluded that applicant failed to submit sufficient evidence to prove that diligent efforts have been made to locate and/or contact inventor Yeung.

Initially, the Office notes that applicant failed to provide any statements of facts by persons with firsthand knowledge of the details, such as the European Attorney or the co-inventors. Where inability to find or locate a named inventor is alleged, a statement

¹ Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating a refusal by an inventor, or the inability to locate an inventor, to also sign a supplemental oath or declaration is a waiver of 37 CFR 1.67. See MPEP 603.

of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the inventor. A person having firsthand knowledge of the facts must sign the statement of facts, where at all possible. If attempts to obtain a forwarding address and to locate the non-signing inventor by other means such as a telephone directory or the Internet continue to fail, then applicant will have provided the necessary proof that the inventor cannot be reached. Applicant should submit documentary evidence to support the conclusion that inventor Yeung cannot be located or that he refused to execute the supplemental declaration. It is important that the forthcoming communication contains statements of fact as opposed to conclusions.

In view of applicant's failure to provide an evidentiary showing that inventor Yeung cannot be located and/or contacted, it is agreed that justice would not be served at this time by waiving the requirement for his signature on the supplemental declaration.

Accordingly, the petition under 37 CFR 1.183 is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. **Failure to timely respond will result in abandonment of the application.** The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.183."

The \$400.00 petition fee will be charged to applicant's Deposit Account, as authorized.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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